

REMARKS

By this amendment, Claim 53 is canceled and Claim 39 is amended to incorporate the subject matter of Claim 53. As no new matter has been introduced by these changes, they should be entered at this time. Applicants respectfully request examination of Claims 26-40, 43-52 and 54-55, which are currently pending.

Claims 26-40 and 43-55 were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable in view of commonly-assigned U.S. Patent No. 6,367,481 to Nichols et al. ("Nichols") in view of U.S. Patent No. 4,784,184 to Adams et al. ("Adams"). Applicants will submit a Terminal Disclaimer to obviate this rejection when the remaining rejections are withdrawn.

Claims 26-34, 37-40, 43-48, 50, 53 (now canceled), 54 and 55 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 4,832,057 to Bale et al. ("Bale") in view of Adams. The reasons for the rejection are set forth in numbered paragraph 5 on pages 3-5 of the Official Action. The Official Action alleges that it would have been obvious to use the filler composition of Adams to fill the wrapper perforations of Bale. This rejection is respectfully traversed.

Independent Claim 26 recites a cigarette wrapper for a cigarette having reduced sidestream smoke between puffs, comprising (i) a first layer of combustible material adapted to be formed around smoking material; and (ii) a second layer of combustible material formed around said first layer, wherein said second layer reduces combustion of said smoking material between puffs, wherein said first layer is more combustible than said second layer when exposed to thermal energy generated by said smoking material, and said second layer includes thermally opened perforations, said perforations being blocked by occlusions which block the flow of oxygen through the perforations until sufficient thermal energy by combustion of said smoking material opens said perforations, wherein the occlusions comprise a combustible filling material.

Independent Claim 39, as amended, recites a smoking article having reduced sidestream smoke between puffs comprising (i) a smoking material; (ii) a first layer of combustible material formed around said smoking material; and (iii) a second layer of combustible material formed around said first layer, wherein said second layer reduces combustion of said smoking material between puffs, wherein said first layer is more combustible than said second layer when exposed to thermal energy generated by said smoking material, and said second layer includes thermally opened perforations, said perforations being blocked by said first layer of material before use of said article and by occlusions which block the flow of oxygen through the perforations until sufficient thermal energy by combustion of said smoking material opens said perforations, wherein the occlusions comprise a combustible filling material.

Bale is directed to an apparatus for making a smokeable cigarette from a preformed un-smokeable rod of tobacco and a separate sheet of cigarette paper (See abstract). A preformed rod of tobacco 18 is wrapped in porous, open structured paper such as tea bag tissue 19 and, using the apparatus of Bale, is over-wrapped or further wrapped in a sheet of wrapping material 22 (See column 4, lines 38-64 and Figure 15).

Bale discloses that the wrapping material may be cigarette paper, an incombustible material such as aluminum foil, or a laminate of an incombustible material with cigarette paper (See column 4, lines 38-45 and column 9, lines 4-7). Bale further discloses that the wrapping paper may be provided with ventilation holes (See column 9, lines 8-9).

Bale does not disclose, however, a cigarette wrapper comprising a first layer of combustible material adapted to be formed around smoking material and a second layer of combustible material formed around the first layer. While Bale suggests that the wrapping material may be provided with ventilation holes, Bale does not suggest providing thermally opened perforations in a second layer of a wrapper, much less thermally opened perforations that are blocked by occlusions. Furthermore, Bale does not suggest a smoking article comprising a second layer of combustible material having thermally opened

perforations that are blocked by a first layer of combustible material and by occlusions as recited in Claim 39. Applicants submit that the first wrapper of Bale (*e.g.*, teabag tissue) is permeable to gas and would not block the flow of oxygen through perforations in a cigarette wrapper that is wrapped around a tobacco rod that is contained in such a porous, open structured paper.

Adams does not remedy the deficiencies of Bale. Adams discloses a rod wrapper material having porosity apertures that are blocked by a coating of a heat-removable porosity-reducing composition (See column 3, lines 15-24). However, there is no suggestion in Adams to provide a wrapper having first and second layers that is adapted to be formed around smoking material, wherein the second layer comprises thermally opened perforations and wherein the first layer blocks the perforations prior to use of the article.

For at least the reasons discussed above, Applicants respectfully submit that Claims 26-34, 37-40, 43-48, 50 and 54-55 are therefore patentable over the combination of Bale and Adams. As such, withdrawal of this ground of rejection is respectfully requested.

Claims 35-36, 49 and 51-52 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Bale and Adams in further view of U.S. Patent No. 5,551,451 to Riggs et al. ("Riggs") and U.S. Patent No. 5,360,023 to Blakely et al. ("Blakely"). The reasons for the rejection are set forth in numbered paragraph 6 on pages 5-7 of the Official Action. The Official Action alleges that it would have been obvious to combine the pattern of holes disclosed by Blakely and the composite wrapper disclosed by Riggs with the tobacco product of Bale and Adams. This rejection is respectfully traversed.

Claims 35-36, 49 and 51-52 depend from independent Claims 26 and 39 and thus are patentable over Bale, Adams, Riggs and Blakely at least for the same reasons that independent Claims 26 and 39 are patentable over Bale and Adams.

Riggs and Blakely fail to cure the deficiencies of Bale and Adams with respect to Claims 26 and 39. Riggs was relied on for disclosing a second layer that extends to a non-zero distance from the distal end of a smoking article and for disclosing a composite

wrapper. Riggs does not disclose, however, a cigarette wrapper comprising a second layer having thermally opened perforations that are blocked by occlusions that comprise a combustible filling material. Riggs is completely silent as to a wrapper having perforations much less a wrapper having perforations blocked by occlusions.

Blakely was relied upon for disclosing a wrapper having a plurality of perforations that can vary in their size, number and position. Blakely does not disclose, however, a cigarette wrapper comprising a second layer having thermally opened perforations that are blocked by occlusions that comprise a combustible filling material. Blakely is completely silent as to a wrapper having perforations much less a wrapper having perforations blocked by occlusions.

Thus, for at least the reasons discussed above, the combination of Bale, Adams, Riggs and Blakely fails to teach or reasonably suggest all the claimed limitations. Accordingly, Claims 26 and 39, as well as the claims dependent therefrom, are deemed patentable over the combination of references. As such, withdrawal of this ground of rejection is respectfully requested.

It is submitted that the difference between the claimed subject matter and the prior art are such that the claimed subject matter, as a whole, would not have been obvious at the time the invention was made to a person having ordinary skill in the art.

In view of the foregoing, it is submitted that the present application is in condition for allowance and such action is earnestly solicited.

Respectfully submitted,

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